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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,842	05/04/2005	Ian Clarke	P/3653-12	6092
2352 7590 11/05/2008 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
EXAMINER				
WIEST, PHILIP R				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
11/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,842

Applicant(s)

CLARKE ET AL.

Examiner

Phil Wiest

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 7, 9-11, 15, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7, 9-11, 15, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/27/08 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 states that the pressure regulator is configured to do the following:

1. Self-regulate the pressure of the gas supplied from the source of gas to maintain the pressure of the supplied gas at a constant and predetermined level so as to maintain the pressure applied to the exterior walls at said constant and predetermined level.
2. Self-regulate the pressure of the supplied gas and the pressure applied to the exterior wall continuously.

These two functions are substantially identical because the pressure of the supplied gas and the pressure applied to the walls of the bag are substantially the same.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4, 7, 9-11, 15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laing (CA 2,083,555) in view of Keime (GB 2,165,312).

5. With respect to Claims 1, 2, and 4, Laing discloses an apparatus 10 for controlled dispensing of a liquid from a flexible bag 40 comprising a substantially gas-tight chamber 20 adapted to contain the flexible bag 40, and an outlet (48 and 49) adapted to receive an outlet conduit 45 communicating with the flexible bag 40. A source of gas 58 is arranged to release gas into the chamber 20, applying pressure to the exterior walls of the flexible bag 40, and a pressure regulator 50 is operable to self-regulate the pressure applied to the bag throughout the dispensing process, thus causing fluid to be dispensed from the bag in a controlled manner. The pressure regulator 50 comprises a microprocessor 56, an air pump 58, and a transducer 55. Regarding Claim 2, the air bag portion 30 of the chamber 20 is substantially air tight. The outlet (48 and 49) comprises a clamp 28 and a needle 29 adapted to seal the chamber (Page 11, Lines 3-

26), and the gas supply 58 is operable to supply gas under pressure to the interior of the chamber 20. The liquid outlet from the chamber is sealed to the outlet conduit in a way that effectively prevents liquid from leaking outside of the conduit. The pressure regulator 50, which comprises air pump 58, microprocessor 56, and pressure transducer 55, is arranged to regulate the flow of gas from the source to the chamber (Page 12, Lines 15-20). Laing, however, does not specifically disclose that the pressure regulator self-regulates the pressure based on pressure feedback from the gas in the chamber (Laing uses pressure feedback from the liquid instead).

Keime discloses a portable injector comprising a compressed gas source 18 that injects gas into a substantially gas-tight chamber to initiate fluid flow. The device further comprises a pressure regulator 23 and pressure relief valve 22 that are capable of controlling the air pressure in the chamber. The pressure regulator is disposed at the inlet to the chamber, between the gas source and the flexible bag, and regulates the pressure in the chamber *based on the pressure within the chamber*. Although the desired pressure is initially overshoot by about 10 millibars, it is quickly stabilized to the desired pressure shortly thereafter. Although the regulator 23 is adapted for manual control, it is fully capable of being used to regulate the pressure within the chamber, and Keime clearly suggests that maintaining a specific gas pressure within the chamber is the ultimate goal of the regulator (see Page 2, Lines 30-85). The automation of a manual activity does not constitute a patentable improvement over the prior art. See MPEP § 2144.04 [Section III]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Laing with the pressure

regulator and pressure relief valve of Keime in order to provide an alternate means for regulating the air pressure within the chamber based on the current gas pressure within the chamber.

6. With respect to Claims 4 and 19, Laing further discloses that the source of gas 58 is connected to an inflatable bladder 30 such that the inflatable bladder is in contact with at least a portion of the exterior wall of the air bag 40. See Figure 1. Regarding claim 19, the pressure regulator is operable to regulate the flow of gas from the source into the inflatable bladder (Page 7, Lines 14-26).

7. With respect to Claim 7, Laing discloses that the inflatable bladder 30 comprises an inflatable sock positioned and operable to wrap around at least a portion of the flexible bag 40 (see Figure 1). An "inflatable sock" is interpreted by the examiner as being any type of bag that is capable of being filled with air.

8. With respect to Claims 10 and 11, Laing discloses that the source of gas is a reservoir 35 pressurized by a pump 58 (see Figure 1). The pump 58 is controlled by the microprocessor 56 in order to change the pressure in the inflatable bladder, thus controlling the flow rate of fluid from the flexible medical supply bag.

9. With respect to Claim 20, Laing discloses that the apparatus comprises a first chamber 10 comprising a flexible bag and a second chamber (50, 52) comprising the source of gas (air pump 58) and the pressure regulator 50.

10. With respect to Claim 9, Laing discloses the portable injector of claim 1 (see rejection above) wherein air is pumped into the chamber 30 by pump 58. Laing does not disclose that the source of gas comprises a pressure vessel of precompressed gas. Keime discloses a portable injector comprising a compressed gas source 18 that injects gas into a chamber to initiate fluid flow. The device further comprises a pressure regulator 23 that is capable of controlling the amount of air infused into the chamber, thus controlling fluid flow. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the portable injector of Laing with the pressurized gas source of Keime in order to provide an alternate means for pressurizing the chamber to create fluid flow from the bag. The use of pressurized gas sources to pressurize a chamber is well established in the art of fluid flow.

11. With respect to Claim 15, Laing discloses the portable injector of Claim 1 and that the chamber 10 has a depth significantly less than the length and width of the chamber (see Figure 1). Laing, however, does not disclose that the pressure vessel and pressure regulator are located alongside the chamber in a common housing. Keime discloses a portable injector wherein the pressure vessel 18 and pressure regulator (21, 23) are located alongside the chamber 4 in a common housing arranged in a cuboidal configuration such that the pressure vessel and pressure regulator are contained within the depth of the housing (see Figures 1 and 2). Repositioning the pressure vessel and regulator within the chamber housing will improve the portability of

the device. Additionally, integration of components and changes of shape are mere obvious matters of engineering choice and do not represent a patentable improvement over the prior art. See MPEP § 2144.04.

Response to Arguments

12. Applicant's arguments filed 8/27/08 have been fully considered but they are not persuasive. Applicant argues that Laing and Keime do not teach or suggest the device as claimed.

13. First applicant argues that Laing does not teach the step of maintaining the air in the chamber at a constant and predetermined level. This argument has not been found persuasive. Liquid is forced out of the bag by pressure in the chamber. A constant pressure in the chamber will cause a constant outflow pressure (i.e. constant flow rate) of the liquid leaving the bag. Laing teaches that when the fluid pressure in the bag begins to drop, the flow rate of liquid out of the bag will also drop. This drop is sensed by the pressure regulator, and the pump acts to correct the pressure in the chamber until the pressure of the liquid in the outlet line returns to normal. Because the liquid in the outlet line is forced out of the bag by the gas pressure of the chamber, ***fluid pressure in the outlet line and gas pressure in the chamber are directly proportional***. It would have been completely within the scope of one of ordinary skill in the art at the time of invention to use feedback from gas pressure (as taught by Keime)

instead of fluid pressure (as taught by Laing) to maintain the pressure in the chamber at a predetermined and constant level.

14. Second, applicant argues that Keime does not correct the deficiencies of Laing because Keime's pressure monitoring is performed manually. As stated above, ***the automation of a manual activity does not constitute a patentable improvement over the prior art*** (see MPEP § 2144.04 [Section III]).

15. Finally, Applicant argues that Keime does not teach monitoring the pressure in the chamber at a constant and predetermined level because Keime "...specifically teaches 'building up' pressure inside the case..., 'draining off' pressure inside the case, and readjusting pressure inside the case." This argument has not been found persuasive. Clearly, the pressure will have to be built up when the bag is first used (the pressure in the chamber must come from somewhere). Additionally, ***the steps of 'building up' and 'draining off' gas pressure are performed in order to maintain the gas pressure at a constant level.*** For these reasons, this argument is erroneous.

Conclusion

16. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued

examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571)272-3235. The examiner can normally be reached on 8:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phil Wiest/
Examiner, Art Unit 3761

//Leslie R. Deak//
Primary Examiner, Art Unit 3761
14 October 2008